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October 1, 2002

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: UNE Triennial Review – CC Docket No. 01-338
Local Competition – CC Docket No. 96-98
Deployment of Advanced Wireline Services – CC Docket No. 98-147

Dear Ms. Dortch:

Attached for inclusion in the record of the three above-referenced proceedings is a copy of a letter to Chairman Michael Powell from Donna Sorgi, Vice President of Federal Advocacy for WorldCom, together with the attachment referenced therein.

Sincerely,

/s/Ruth Milkman
Ruth Milkman

Attachment

WORLDCOM

Donna Sorgi
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October 1, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street SW, Suite TW-A325
Washington, DC 20554

Re: Correction of Recent BOC Misstatements Regarding the Law and UNE-P

Dear Chairman Powell:

In recent weeks, the Bell Operating Companies (BOCs) have made a great many untrue statements in the course of their attacks on the unbundled network element platform (UNE-P). They have claimed, for example, that UNE-P is a perversion of the Telecommunications Act of 1996 and that it is only a transition mechanism to facilities-based competition. SBC has claimed that UNE-P will drive it into bankruptcy – an assertion that has been met with universal disdain by a wide array of commenters and state regulators.[1] Finally, in the ultimate cynical gesture, Verizon CEO Ivan Seidenberg argued that the FCC should intervene to eliminate UNE-P, preempting the yeoman efforts the states have undertaken to foster residential competition, asserting that "state commissions don't get it. They don't have a clue."[2]

WorldCom seeks to correct the record regarding the basis in law for UNE-P. The Act mandates UNE-P. Moreover, the Act nowhere contains a requirement that UNE-P serve only as a transition mechanism to competitors' use of their own facilities. WorldCom urges the Commission to reject the misrepresentations and hyperbole of the BOCs and their denigration of state commission work and recognize the BOCs' comments for what they are: the latest in a long series of attempts to avoid local competition.

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[1] *See SBC Dials Wrong Number in Quest for Rate Increase*, Crain's Chicago Business (Sept. 23, 2002), *available at*: <http://www.chicagobusiness.com/cgi-bin/mag/article.pl?article_id=18901&bt=sbc&arc=n>; *Rivals Question SBC's Motives for Layoffs; Some Analysts Say Financial Pressure is Real,* TR Daily (Sept. 27, 2002); Letter from the National Association of Regulatory Utility Commissioners to the Honorable Thomas A. Daschle, United States Senate (Sept. 27, 2002) ("*NARUC Letter to Sen. Daschle*").

[2] *Seidenberg Says UNE-P is "Manageable Issue" for Verizon*, Communications Daily, (Sept. 10, 2002).

I. UNE-P IS INTEGRAL TO THE ACT, NOT A "PERVERSION" OF THE ACT

A recent article quoted Herschel Abbott, BellSouth's vice president-governmental affairs as claiming that UNE-P is a "perversion of the Telecommunications Act of '96."[3] There is no basis in law for this statement.

The ability to use unbundled network elements (UNEs), including combinations such as UNE-P, as an entry strategy, is fundamental to the Telecommunications Act of 1996. In recognition of this fact, the FCC has required incumbent LECs to provide UNE-P to requesting carriers since the time of its first *Local Competition Order* in 1996, and the Supreme Court has affirmed the FCC's requirements.

Section 251(c)(3) of the Act establishes the incumbent LECs' obligation to provide UNEs, and to allow competitors to combine those UNEs in order to provide telecommunications service. Specifically, incumbent LECs have:

> The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis . . . . An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.[4]

From the outset, the Commission has interpreted this language as affording competitive carriers the right to purchase UNE-P from incumbent LECs. In the August 1996 *Local Competition Order*, the Commission stated that Section 251(c)(3) does not "discuss, reference, or suggest a limitation or requirement in connection with the right of new entrants to obtain access to unbundled elements."[5] The Commission therefore rejected arguments by the incumbent LECs that requesting carriers "must own or control some of their own local exchange facilities" in order to purchase UNEs.[6] The Commission likewise rejected the incumbent LECs' argument that allowing UNE-P would have the effect of

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[3] *MCI: Success of 'Neighborhood' Depends on Maintaining UNE-P*, TR Daily (Sept. 18, 2002).

[4] 47 U.S.C. § 251(c)(3).

[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 328 (1996) ("*Local Competition Order*").

[6] *Id.*

depriving section 251(c)(4) (the wholesale resale requirement) of meaning, noting that: "[C]arriers using solely unbundled elements, compared with carriers purchasing services for resale, will have greater opportunities to offer services that are different from those offered by incumbents."[7]

The U.S. Supreme Court has twice upheld the Commission's view that the Act requires incumbent LECs to provide competitive carriers with UNE combinations, including UNE-P. In *Iowa Utilities Board,* the Supreme Court held that the Commission's rule requiring incumbent LECs to provide existing combinations to requesting carriers was reasonable.[8] Recently, the Supreme Court clarified that the FCC can require incumbents to combine elements not previously combined.[9] In this recent decision, issued just four months ago, the Supreme Court also rejected each and every attack the BOCs launched on TELRIC-based pricing of UNEs, finding that that the TELRIC standard is fully compensatory and fair.[10]

State commissions, which have been on the front lines implementing the Telecommunications Act of 1996, have unequivocally supported UNE-P,[11] and have worked for six long years to review mountains of evidence to develop wholesale rates, with the result that local markets are just beginning to be open across the country. The BOCs would have you believe the states got it completely wrong. That claim deserves outright rejection.

There can be no debate that UNE-P, when priced according to TELRIC principles, is one of the local competition vehicles that Congress intended to be available to all competitors to challenge the BOCs' local monopolies. The "perversion of the Act" is not UNE-P, but more accurately describes the current BOC attempt to destroy the first (and thus far only) vehicle for widespread local residential competition.

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[7] *Id.*, ¶ 332.

[8] *AT&T v. Iowa Utilities Board,* 525 U.S. 366, 394-95 (1999).

[9] *Verizon Communications, Inc. v. FCC*, -- U.S. --, 122 S.Ct. 1646, 1654 (2002).

[10] *Id.* at 1678-79.

[11] *NARUC Letter to Sen. Daschle* (Sept. 27, 2002); *Resolution Concerning The UNE Platform,* Recommended by the NARUC Board of Directors November 13, 2001, Adopted in Convention November 14, 2001, *available at*: <http://www.naruc.org/Resolutions/2001/annual/telecom/une.shtml>.

II. CONGRESS DID NOT DESIGNATE UNE-P AS A MERE TRANSITION MECHANISM

The BOCs have attempted to impute to Congress the intent to make UNEs available only for a limited period of time. Verizon CEO Ivan Seidenberg took this position in a recent interview, making the patently incorrect claim that UNEs were intended to be only transitional "stepping stones."[12]

The Act does not contain any language to support the BOCs' interpretation, however,[13] and the FCC's 1996 *Local Competition Order* did not recognize any temporal limitation on the availability of UNE-P. Rather, the Commission explained that the "Act contemplates three paths of entry into the local market – the construction of new networks, the use of unbundled elements of the incumbent's network, and resale,"[14] and that section 251 "neither explicitly nor implicitly expresses a preference for one particular entry strategy."[15] Most notably, in *Iowa Utilities Board*, the Supreme Court upheld the Commission's rules requiring incumbent LECs to provide new entrants with combinations, such as UNE-P, and noted that "the Commission reasonably omitted a facilities-ownership requirement. The 1996 Act imposes no such limitation; if anything, it suggests the opposite."[16] In light of this statutory framework, the Commission stated that it anticipated that new entrants would "follow multiple paths of entry," including: (1) relying first on resale and then deploying their own facilities; (2) using a combination of entry strategies simultaneously; or (3) pursuing a single entry strategy that does not vary by geographic market or over time.[17]

In the *UNE Remand Order*, the Commission reiterated its view that "Congress did not express explicitly a preference for one particular competitive arrangement." The

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[12] *Seidenberg Blames Regulators for Telecom's Economic Slump*, Communications Daily (Sept. 20, 2002).

[13] Even the BOCs do not have the temerity to suggest that Congress intended access to voice grade loops to be time-bound, but the statute does not differentiate among UNEs in this regard.

[14] *Local Competition Order*, ¶ 12.

[15] *Id.; see also* Reply Brief for the Federal Petitioners and Brief for the Federal Cross-Respondents at 37, *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (No. 97-826, *et al.*), stating that "nothing in Section 251 compels new entrants to pick one entry option over another when either, by its terms, is available. Nor should the Commission, much less the federal courts, create artificial limitations on one option to encourage greater use of another.")

[16] *AT&T v. Iowa Utilities Board*, 525 U.S. at 392.

[17] *Local Competition Order*, ¶ 12.

Commission noted that UNEs may serve "at least in some situations" as "a transitional arrangement" while new entrants develop a customer base and construct their own networks, thus acknowledging that in other circumstances UNEs would not be transitional.[18] As the Commission noted, competitors prefer to deploy their own facilities "where it is economically feasible to do so."[19] But so long as competitive carriers are impaired without access to a particular UNE and the legal standard in section 251(d)(2) is satisfied, the network element must remain available.

The current BOC strategy, if they cannot persuade the FCC to kill UNE-P outright, is to press the FCC to impose unreasonable trigger mechanisms in an attempt to compel a transition to facilities. There is no statutory basis for such regulatory intervention, and there is no factual or theoretical basis for believing that the Commission can impel carriers to build facilities by fiat. The most likely result of a premature truncation of UNE-P would be the end of residential competition. There is ample reason to believe that a provider would not ride the network of its competitor any longer than necessary, unless that network was priced below cost, which the U.S. Supreme Court has unequivocally concluded is not the case with TELRIC-based pricing. The BOCs are urging the FCC to adopt an industrial policy on their behalf, which is artificial as well as premature. Rather than intervene at this very early stage of UNE-P-based competition, and try to devise incentives or triggers to compel transition, the FCC should allow UNE-P-based competition to develop beyond its nascent stage, and let market forces and technology drive the transition to facilities wherever it is possible and economic.

III. UNE-P IS THE ONLY PROVEN WAY TO SERVE CONSUMERS ON A WIDE-SCALE BASIS – NOT AN "UNDESIRABLE" FORM OF COMPETITION

SBC has made a number of preposterous claims recently, among them the assertion that UNE-P is a "threat to American consumers."[20] The fact is that UNE-P is the only entry strategy that thus far has proven successful for mass market customers. There is

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[18] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 6 (1999) ("*UNE Remand Order*").

[19] *Id.*, ¶ 7.

[20] Press Release, SBC: *AT&T Defends Driving Telecom Industry to the Brink* (Sept. 18, 2002), *available at*: <http://www.sbc.com/press_room/1,5932,31,00.html?query= 20252>. SBC, of course, is not the only BOC making such claims. BellSouth CEO Duane Ackerman recently termed UNE-P "counterfeit competition." Legg Mason Wood Walker, Inc., *Bells Pound Away at UNE-P, TELRIC; CLECs Knock Rhetoric as Exaggerated,* Washington Telecom & Media Insider (Sept. 27, 2002).

virtually no UNE-loop-based competition for mass market customers and the barriers to such competition remain insurmountable. Cable telephony has made only slightly greater inroads in the mass market. But UNE-P is finally beginning to succeed. Indeed, one sign of that success is that SBC recently filed an *ex parte* complaining about the fact that WorldCom and other competitive carriers have been able to use UNE-P to compete effectively for residential customers.[21] SBC has become so accustomed to its monopoly position that it is concerned that its current market share has dropped to 85%.[22] Far from being a cause for concern, however, the fact that competitive carriers have begun to make inroads into the local markets is an indication that the pro-competitive provisions of the 1996 Act finally are coming to fruition. The current issue with the Act's implementation is not, as the BOCs suggest, that the FCC has misinterpreted the statute, but rather that the Act must be given a reasonable opportunity to work.[23]

SBC has attacked UNE-P aggressively, but has failed to apply for authority to offer in-region interLATA services in more than half of the states in its region. This combination of action and inaction underscores SBC's preference: to protect its local monopoly rather than to compete assiduously in the provision of long distance/all distance services. Analyst Philip Jacobson noted recently, "SBC is like a house of cards. They just don't have the competitive mentality."[24]

IV. THE STATES HAVE WORKED HARD TO IMPLEMENT THE ACT'S UNE REQUIREMENTS AS CONGRESS INTENDED AND THE FCC SHOULD REJECT THE BOCS' ATTEMPTS TO PREEMPT THE STATES

Despite the above-described decisions by the Commission and the Supreme Court, the BOCs have continued to oppose the right of competitors to obtain UNE-P. The BOCs' arguments have proven extremely fluid, however, changing dramatically over time. In 1996, William P. Barr, then General Counsel of GTE, served as counsel for GTE and the BOCs (including Bell Atlantic and NYNEX) in their appeal of the FCC's *Local Competition Order*. Barr argued that the FCC had no jurisdiction to establish pricing rules

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[21] *See* "UNE-P: Impacts and Implications" at 18, attached to letter to Marlene H. Dortch, FCC, from Brian J. Benison, SBC, CC Docket No. 01-338, *et al.* (Sept. 10, 2002).

[22] *Id.* at 10.

[23] Catherine Yang, *The Decision that Could Reshape Telecom*, Business Week (Sept. 30, 2002) (noting that "[t]he problem with the much-maligned Telecom Act of 1996 may well be that it hasn't really been given a chance" due to "regulatory and legal roadblocks.")

[24] *SBC's Rhetoric, Job Cuts Prompt Industry Retorts,* Chicago Tribune (Sept. 28, 2002) (quoting Philip Jacobson, General Partner, Network Conceptions LLC).

for what is essentially local intrastate telecommunications service.[25] Similarly, in section 271 proceedings, the BOCs have repeatedly urged the Commission to defer to state pricing decisions. But now that states have begun to establish prices and other rules that are not to their liking, the BOCs argue that state commissions are ill-equipped to decide issues relating to UNE-P and even rely on state pricing decisions as a justification for elimination of UNE-P altogether. State commissions "don't have a clue," says Ivan Seidenberg, CEO of Verizon (the company for which Mr. Barr is currently General Counsel).[26]

The BOCs current attack on state commissions and on UNE-P also comes just as the BOCs are succeeding in obtaining in-region long distance authority in many states. In passing the Act, Congress authorized BOCs to provide long distance service only after they irreversibly opened their markets to competition. The BOCs have relied on UNE-P to show that such competition exists. They have relied on UNE-P to argue that they have met the requirements of Track A in particular states, contending in that context that UNE-P providers are facilities-based providers. They have relied on UNE-P to establish that they have met the requirements of the competitive checklist, which specifically requires provision of all of the elements that make up UNE-P. And they have relied on UNE-P to show that the local markets are open and in-region long distance entry is therefore in the public interest. But now that they have obtained – or may soon obtain – long distance authority in many states, the BOCs urge that UNE-P be taken away. The BOCs therefore want to eliminate the only vehicle for local residential and small business competition at the same time they are permitted to provide long distance service. That is exactly the opposite of the stated goal of the Act: competition for *all* telecommunications services.

Attached for your reference is a summary of a broad array of statements from leading publications, state commissions and consumer advocates favoring UNE-P and rejecting the BOCs' efforts to kill competition in its infancy, as well as reports from analysts offering a balanced view of the healthy state of the BOCs that are able to compete for long distance service while facing UNE-P-based competition.

While the BOCs' advocacy opposing UNE-P clearly changes based on political expediency, the Commission's and the Supreme Court's views have remained constant: incumbent LECs are required to provide UNE-P to requesting carriers. The BOCs' attempts at revisionist history should not be allowed to cloud the fact that the FCC's

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[25] *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 793 (8th Cir. 1997), *aff'd in part and rev'd in part*, 525 U.S. 366 (1999); *on remand*, 219 F.3d 744 (8th Cir. 2000), *cert. granted sub nom. Verizon Communications, Inc. v. FCC*, 121 S.Ct. 877 (2001), *aff'd in part and rev'd in part*, 122 S.Ct. 1646 (2002).

[26] *Seidenberg Says UNE-P is "Manageable Issue" for Verizon*, Communications Daily, (Sept. 10, 2002).

longstanding UNE-P requirements are solidly grounded in law and are necessary to achieve the procompetitive goals of the Act. I urge the Commission to resist the BOC juggernaut. The BOCs' attempt to kill or limit artificially the availability of UNE-P deserves the Commission's outright rejection.

Sincerely,

Donna Sorgi/rek

Donna Sorgi

Attachment

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin
Christopher Libertelli
Matthew Brill
Jordan Goldstein
Daniel Gonzalez
William F. Maher
Jeffrey Carlisle
Michelle Carey
Thomas Navin
Jeremy Miller
Robert Tanner
Marlene H. Dortch

LEADING VOICES ACROSS THE COUNTRY SUPPORT UNE-P AND DECRY THE BELL CAMPAIGN TO KILL COMPETITION

Editorials & Commentaries Supporting UNE-P

BUSINESS WEEK, "The Decision That Could Reshape Telecom," September 30, 2002:

- "The problems with the much-maligned Telecom Act of 1996 may well be that it hasn't really been given a chance—until this year.... For years...the Bells protected the status quo through regulatory and legal roadblocks. But now that AT&T and other rivals have finally found a way to compete with the Bells, the results are promising."
- "From California to New York, state regulators are finally applying the 1996 Act more aggressively.... In Michigan, incumbent Bell SBC Communications Inc. has shaved local rates 33% since February, when AT&T plowed into the market."

CHICAGO TRIBUNE, "Whining by SBC's Whitacre Has Hollow Ring," September 29, 2002:

- "Whitacre got this one wrong. Revenues aren't going down because of UNE-P. They're going down because of competition. Don't blame Whitacre for being confused. A lifelong monopolist, he hasn't known competition until now. It's no surprise he doesn't like it."
- "In his early exposure to real competition, Whitacre is responding the way first-time competitors typically do. He feels the pinch of competition and figures it's someone else's fault that SBC is hurting. It's the regulators' fault. They're letting competitors rent his network platform at way too cheap a price. It's customers' fault. They keep abandoning SBC for those upstarts from AT&T and MCI. Imagine all those fickle people signing up with outsiders ... merely because they're getting the same service at a lower price."
- "As for the shock and disgust Whitacre expresses at his cutthroat competitors and hapless regulators, don't buy it."
- "Whitacre rode into town to blame regulators for SBC's troubles. But he mostly should blame himself."

FORBES, "The Bells Sing the Blues, On Cue," September 27, 2002:

- "When SBC Communications announced its latest round of job cuts, the release went out of its way to indicate that the sky is falling.... (I)nvestors suspect that SBC Chief Executive Edward Whitacre's remarks were intended mostly for the US Congress and the Federal Communications Commission, as part of the campaign to free the Bell regional operating firms from their regulatory burden."

CRAIN'S CHICAGO BUSINESS, "SBC Dials Wrong Number in Quest for Rate Increase," September 23, 2002:

- "Stung by the first pinprick of competition...SBC Ameritech is howling for the balm of regulatory intervention."
- "Forgive us if we don't organize a bake sale for SBC Ameritech."
- "(T)he SBC honchos...protest that the wholesale rates force the company to sell network access below cost. They warn of dire consequences if the rates aren't raised.... (T)he company has provided no numbers to support the claim that its actual costs are about twice the wholesale rates set by the ICC [Illinois Commerce Committee] after a long regulatory process in which SBC Ameritech was a full participant. Offering no breakdown of their actual costs, company executives expect us to take it on faith that Illinois regulators – along with those in virtually ever other state – erred by a mile in setting wholesale rates intended to cover those costs, plus a profit for the incumbent local phone company."
- "SBC Communications remains the picture of financial health, notwithstanding the ominous warnings of its execs.... That leaves SBC plenty of cash to invest in the Illinois telephone network – something that hasn't always been a top priority in the past decade."
- "No, we won't beat the drums for an increase in wholesale rates barely six months after those rates took effect, giving most Illinois consumers their first real choice in local telephone service providers."

TECHCENTRALSTATION.COM, "Caution, Competition Ahead," September 23, 2002:

- "(U)ntil lately, local competition hasn't happened – mainly because of lawsuits and foot-dragging by the Bells – and, as you would expect in a monopoly market, rates have risen and service deteriorated. Now, much of the underbrush has been cleared, and state public utility commissions are paving the highway to competition by setting sensible UNE-P prices."
- "(A)s UNE-P lets competitors enter local service, the law (under Section 271) allows the Bells to get into long distance, which so far has provided the Bells with more than they have lost on the local side."
- The objective of [SBC's] Whitacre and William Daley...is to get Congress or the FCC to pre-empt the states and jack up the rates that consumers pay.... It is true, however, that SBC – and the other Bells - have a real fight on their hands. That's what competition is all about. And that's great for consumers."
- "The Bells have traditionally focused their attention on lobbying and lawyering rather than on innovation and customer service. Competition is a new and scary development for them, and their aim over the past six years has been to kill it off – not by offering cheaper and better products but by persuading politicians and filing lawsuits."
- "In the end, it appears the Bells are going to have to compete – in long distance, broadband and local service – whether they like it or not. The

winners in telecommunications will be entrepreneurs and innovators, not monopolists. Of course, the biggest winners of all are America's consumers and small business owners who, in these tough economic times, are starting to enjoy the benefits of lower telecom rates and better services – just as the advocates of competition in the Administration and Congress have been saying all along."

BUSINESS WEEK, "What's Alarming the Bells," September 2, 2002:

- "Since the beginning of this year, under the much-derided aegis of the Telecom Act, regulators in a dozen states including California, New Jersey and New York are finally forcing the Bells to lower wholesale rates for local service.... As a result, competitors like AT&T have charged back into the market... Competition, if it can be sustained, will be a boon to consumers and a catalyst for growth and innovation in this troubled sector."
- "The new competition is a bitter pill for the Bells to swallow.... Indeed, the Bells are fighting back. [But] this time around, it is unlikely that the Bells can turn back the tide of competition."

USA TODAY, "Competition Keeps Calling, but Local Bells Resist," July 17, 2002:

- "(S)tate utility commissioners are beginning to take ...steps. Last October, Ohio lowered rental fees, saying it would 'open the door for more local telephone competition.' New York followed last January. In May, California cut rental fees by 40%. And...New Jersey cut its fees roughly in half.... The resulting competition should pay off for consumers. Competition in New York saves phone users there $700 million a year, according to a study by the Telecommunications Research & Action Center."
- "None of this progress, though, comes without a fight.... What the Bells really fear is the loss of their monopoly grip on local markets and the high phone rates it lets them charge."
- "Rates for local phone service have climbed faster than inflation since 1997, according to the FCC. That's in sharp contrast to hotly competitive long-distance and cell phone services, which have seen prices plunge."
- "Stanching competition has been the sorry pattern of the Bell companies since the 1996 law was passed. They have filed suits challenging key provisions of the law and its implementation. Their attempts to undermine competitors have cost them millions in fines.... The Bells also have failed to live up to promises to compete made in exchange for lucrative merger deals."
- "Michigan and a few other states have shown the way to get competition rolling. Now other states need to join in. Six years is too long to wait for local phone competition."

State Regulators Support UNE-P

- "(W)e are witnessing a collateral attack on UNE-P and unbundling.... Unfortunately, UNE-P and unbundling have become scapegoats for issues that reach far beyond the Telecommunications Act of 1996." (National Association of Regulatory Utility Commissioners (NARUC) Telecommunications Chairman Joan Smith in press release regarding a NARUC letter to Congress 9/27/02)
- "What is this uproar really about? The incumbents insist that wholesale prices they are 'forced' to charge are wrong – confiscatory, below cost, illegal. This argument falters in the face of the Supreme Court decision in Verizon v. FCC. The argument is also weak when we consider that the incumbents themselves have set prices in 271 proceedings and in various interconnection agreements. In most states the default prices have been determined in contested cases based on cost studies and a record that is appealable to the courts." (NARUC Telecommunications Chairman Joan Smith in press release regarding a NARUC letter to Congress 9/27/02)
- "(T)he RBOCs only chose to commence their assault on UNE-P after it began to erode their monopolistic profit levels and only after the US Supreme Court upheld the pricing model underlying UNE-P. They were willing to live with the 1996 Act until it produced the result they have sought to avoid since its passage – competition." (NARUC Commissioner Robert Nelson in a press release regarding a NARUC letter to Congress 9/27/02)
- "The 1996 Act provided for three separate methods of entry into local markets – CLEC-provided facilities, unbundled network elements and combinations thereof, and resale.... The 1996 Act did not distinguish or prefer any one method of entry over any other method and recognizes that the construction of new, rival network facilities requires new entrants to incur substantial and risky fixed and sunk costs.... An environment in which *all* methods of competitive entry envisioned by the 1996 Act are possible would best and most rapidly provide significant public interest benefits for *all* types of consumers." (NARUC Resolution Concerning The UNE Platform, November 2001)
- "Competing local exchange carriers will be 'impaired' in their ability to compete without the availability of UNE-P." (FCC Triennial Review Comments, New York State Department of Public Service 4/4/02)
- "It is counter-productive to provide opportunities for RBOCs to strengthen their market presence in the combined local/long-distance telecommunications market via 271 approval, while removing CLECs' competitive options in the same market." (FCC Triennial Review Comments, Illinois Commerce Commission 4/5/02)
- "The need for regulatory certainty and stability is essential if competing carriers are to enter, and remain, in local markets, and the consumer benefits of the 1996 Act – i.e., a wide range of choices of services at lower prices – are to be finally and fully realized." (FCC Triennial Review Comments by the People of the State of California and the California Public Utilities Commission 4/5/02)

- Other state utility commissions filing comments in support: Alabama, Colorado, Florida, Illinois, Indiana, Kansas, Minnesota, Michigan, Missouri, Nebraska, New Jersey, Ohio, Oregon, Utah, Pennsylvania, Texas, Virginia, Washington.

Consumer Groups Support UNE-P to Bring Competition to the Local Market

Excerpts from a joint press release and joint reply comments filed with the Federal Communications Commission in the Triennial Review proceeding by the Texas Office of Public Utility Counsel, Consumer Federation of America, Consumers Union, Media Access Project, and the Center for Digital Democracy:

- "(R)educing the availability of unbundled network elements is bad law and bad policy that would devastate the competitive local exchange companies and deal a deathblow to local competition." (FCC Comments filed by Texas Office of Public Utility Counsel, Consumer Federation of America, Consumers Union, Media Access Project, and the Center for Digital Democracy 7/17/02)
- "Because the local telephone market starts from a condition of a hundred year old monopoly and seeks to introduce competition into a networked industry, removing unbundled elements in markets that are not sufficiently competitive would have the effect of substantially lessening the prospects for competition and extending the life of the monopoly." (FCC Comments filed by Texas Office of Public Utility Counsel, Consumer Federation of America, Consumers Union, Media Access Project, and the Center for Digital Democracy 7/17/02)
- "The purpose of unbundling is to promote and protect competition. Network elements are necessary for entry into the local telephone market. Given the opportunity, those in the market would certainly withhold them to diminish competition in the end-use market. They will exercise their market power, withholding supply or raising prices to impair competitors. Only under circumstances in which the market for network elements is competitive will this behavior be unprofitable." (FCC Comments filed by Texas Office of Public Utility Counsel, Consumer Federation of America, Consumers Union, Media Access Project, and the Center for Digital Democracy 7/17/02)
- "The blanket removal of unbundled network elements demanded by the ILECs ... would relegate the vast majority of residential customers to be captive customers of incumbents for a very long time." (FCC Comments filed by Texas Office of Public Utility Counsel, Consumer Federation of America, Consumers Union, Media Access Project, and the Center for Digital Democracy 7/17/02)
- "Unleash(ing) the market power of the incumbent monopoly...would be to doom consumers to be captive customers of the incumbent monopolies-facing rising prices, limited choices and worsening customer service." (Press release 7/17/02)

Analysts Offer Balanced View:
Local Competition with UNE-P for CLECs and Long-Distance for RBOCs

Daniel P. Reingold, senior US wireline services analyst for Credit Suisse First Boston Corp (from TR Daily, "Rivals Question SBC's Motives for Layoffs; Some Analysts Say Financial Pressure is Real") September 27, 2002:

- "It's not UNE-P that's a problem for the [Bells]. It's wireless substitution." Wall Street is being used as "a pawn in the political process." The Bells will gain more from winning regulatory approval to provide interLATA service than they'll lose from loss of lines to UNE-P carriers. "It's an asymmetric process" that favors the Bells over the IXCs.

Ajay Mehra of Columbia Management Group (from Cleveland Plain Dealer, "SBC to cut 2400 jobs in region"), September 27, 2002:

- "(SBC) blaming everything on regulators is a little bit of political posturing. I think they have other issues."

Jeff Kagan, Independent Telecom Analyst (from San Antonio Express-News, "SBC to cut 11,000 jobs" and Chicago Tribune "SBC's Rhetoric, Job Cuts Prompt Industry Retorts"), September 28, 2002:

- "There's a depression right now in the telecom industry. The pressure to cut costs is intense. Clearly, (SBC) trying to pin ... layoffs on (wholesale pricing issues) is stretching it. They're using this as leverage with regulators."
- "SBC's tactics will backfire on them. It's silly for them to say all their trouble stems from one thing. I want to take them seriously, but it's difficult when they take such an extreme position."

JP Morgan, Telecommunications - Wireline Services Equity Research, September 16, 2002:

- "Based on the pattern of market penetration witnessed in New York, Texas and Massachusetts, we expect the ILECs to achieve a 10% market share of long distance within one year of entering a market, 25% by the second anniversary and 40% by the end of their third year in a market."
- "We think IXCs will also lose over 20% of its total customer base by 2006."

Lehman Brothers, Equity Research, September 13, 2002:

- "BellSouth emphasized that their success in entering the LD market through 271 approval offers a considerable competitive advantage over the UNE providers, and they expect that the appeal of Local/LD bundles will obviate their need for a major change in UNE regulations."

Bear, Stearns & Co. Inc, Equity Research, September 11, 2002:

- "RBOC pricing is in-line or higher than the IXCs'...SBC assumes that it can achieve 30% market share 12 months after entering a new market and is targeting a long run (3-4 years) penetration rate in the 60%-70% range."
- "Competitive penetration of the [Southwestern Bell] region's local market has flattened in the 15%-20% range."

GOLDMAN SACHS, Analyst Comment, August 22, 2002:

- "In the absence of pervasive long distance approval, UNE-P has been and will continue to be very damaging to SBC.... However, we should not extrapolate the SBC experience uniformly to the other RBOCs.... [I]f an ILEC loses a customer to UNE-P it's a big hit to the bottom line – but it has to lose the customer for the hit to be taken. And in our view VZ and BLS are likely to be able to offset this materially better than SBC over the next year. It should be noted that SBC has been enjoying these same benefits share retention [sic] in its states where it has long distance approval."

LEGG MASON, Equity Research Company Update, August 21, 2002:

- "Our problem with the other firm's analysis is that it does not wrestle with the recent successes of Verizon in winning back customers, as Verizon can now offer the same bundle of local and long-distance products to 74% of its lines...."
- "Verizon appears to be coping with the competitive environment far more successfully than its peers."
- "The key message, in our view, is that Verizon appears farther along in the competitive and regulatory processes, and we believe that this permits the company to contend better than the other RBOCs with alternative products; that is, Verizon is able to offer long-distance services to 74% of its in-region Bell lines by contrast with BellSouth and SBC, which can offer those services to a minority of their lines, 27% and 29% respectively."